IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 347 of 1997

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRUTLAL J PANDYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 347 of 1997

MR SK PATEL for Petitioner No. 1

Mr. H.M. Prachchhak, AGP for Respondent No. 1-2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 15/12/2004

ORAL JUDGEMENT

1. In the present petition under Article 226 of the Constitution of India, the petitioner challenges the order of reversion dated 5th December 1996, reverting the

petitioner from the post of Forest Guard to the post of Beat Guard.

2. As submitted by the learned advocate for the petitioner, the petitioner was initially appointed as Beat Guard on 25th August 1972. The petitioner resumed his duty on 6th September 1972. The petitioner was given promotion from the post of Beat Guard to the post of Forester on 19th March 1996. The order of reverting the petitioner was passed by the respondents because the petitioner had made grievances against the illegal action of denuding the forest by other staff members of the Department and the private persons. Because of the grievance of the petitioner, the action, which was taken by the respondents to revert the petitioner, is a case of vindictiveness, arbitrariness and mala fide on the part of the respondents and, therefore, the order of reversion is required to be quashed and set aside.

3. The learned Assistant Government Pleader, Mr. Prachchhak, has submitted that, by reverting the petitioner from the post of Forester to the post of Beat Guard, the respondents have acted simply on the fact that the petitioner was not promoted on regular basis as Forester, but, was given only the charge of post of Forester, which is a temporary post, in view of certain administrative reasons. He, further, submitted that no procedure is required to be followed when a person is placed in his original post. According to the learned Assistant Government Pleader, Mr. Prachchhak, it was a case of reversion and, therefore, the allegation of exercise of power in an arbitrary manner by the respondents is without any basis. It is, further, submitted that, in support of the vague allegations levelled by the petitioner about the mala fide action of the respondents, no material is placed and, taking into consideration the totality of the circumstances together, the order of placing the petitioner in his original post of Beat Guard was simply passed on administrative reasons and in the public interest. Lastly, the learned Assistant Government Pleader, Mr. Prachchhak, has submitted that the petitioner was not given regular promotion from the post of Beat Guard to the post of Forester and, therefore, no opportunity of hearing is necessary and, therefore, it is not a fit case requiring interference of this Court in exercise of its powers under Article 226 of the Constitution of India.

4. I have heard the learned advocates for the parties. I have also perused the record of the petition which clearly establishes that the petitioner was not

regularly promoted as Forester as averred by the petitioner. Upon perusal of the impugned order dated 5th December 1986, it is an order of placement of the petitioner to his original post of Beat Guard passed by the respondents on the ground that the services of the petitioner as Forester were not found to be satisfactory and the petitioner was given an opportunity by issuing a show cause notice to represent his case as to why he should not be placed to his substantive post of Beat Guard. Even then, the petitioner failed to avail of that opportunity offered to him and, therefore, it cannot be said that, mere holding of charge of a higher post, namely, Forester, the petitioner does not acquire any legal right to claim the higher post of Forester. If the decision is taken by the respondents on the ground of unsatisfactory performance, it cannot be said that the order of reversion is unjust, unreasonable, or arbitrary.

5. No vested right has occurred to the petitioner, since the petitioner was holding only the charge of Forester, a promotional post, on temporary basis and, therefore, in the absence of specific plea with regard to mala fide, the submission of the learned advocate for the petitioner about the action of alleged reversion of the petitioner being unjust, unreasonable, or arbitrary, cannot be upheld.

6. In the result, the petition fails and is rejected. Rule is discharged with no order as to costs.

(Anant S. Dave, J.)
(swamy)